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Docket No.: KCC-16588

REMARKS

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the following remarks. Currently, Claims 1-14, 19-32, 36-40, 44-52, 56-57, and 59-60 are pending. Claims 49-51 and 59 have been allowed.

Claim Rejections - 35 U.S.C. §102

The rejection of Claims 1, 2, 4-7, 14, 19, 21, 28, 32, 36-40, 44, 45, 52 and 60 (Claim 59 having been allowed) under 35 U.S.C. §102(b) as being anticipated by Sauer (U.S. Patent No. 5,624,428) is respectfully traversed.

Sauer discloses a disposable absorbent article including primary fasteners and secondary fasteners. The secondary fasteners are configured to connect the front portion to the rear portion of the article after the primary fastener has been disengaged "in such a manner that allows the waist opening of the absorbent article to expand such that the absorbent article can be pulled up or down over the wearers' hips." (Col. 2, lines 19-25). As shown in Fig. 2, when the primary fastener 42 has been disengaged from front panel 22, the secondary fastener 44 is located inward of the primary fastener.

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Sauer does not disclose each and every element or limitation of Applicants' claims.

Frangible bond

Applicants' independent Claims 1, 19, 36, 52 and 60 each requires a "frangible bond." On page 3 of the Final Office Action, the Examiner states that item 44 of Sauer, the secondary fastener, is considered to be a frangible bond. Sauer does not disclose that the secondary fastener 44 is a "frangible bond."

"Frangible bond" and "refastenable" are defined in Applicants' specification on pages 14-15 and page 18 as follows:

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"Frangible bond" refers to a nonrefastenable bond designed and intended to be separated one time by the user, when desired. The frangible bond comes apart without substantially destroying or deforming the functional properties or characteristics of the materials that are bonded together. The frangible bond can be effectuated via ultrasonic welding, thermal bonding, crimping, cohesives, adhesives, compression, nipping, needle punching, sewing, hydroentangling, and similar technologies known in the art. (Emphasis added)

"Refastenable" refers to the property of two elements being capable of releasable attachment, separation, and subsequent releasable reattachment without substantial permanent deformation or rupture.

The secondary fastener 44 in Sauer is releasably engageable with the front portion 22. (Abstract; Col. 7, lines 57-62; Col. 8, lines 2-12; Col. 9, lines 17-22 and 30-35; Col. 10, lines 1-9 and 38-56). Thus, the secondary fastener 44 is refastenable, and not frangible.

The Examiner states on page 2 of the Final Office Action under "Response to Arguments" that "[t]he argued limitation of a nonrefastenable bond is not claimed and is directed to how the bond is used." Applicants respectfully disagree. As stated in the above definition, a frangible bond is *defined as* a nonrefastenable bond. Therefore, the limitation of a nonrefastenable bond is claimed. Applicants also respectfully disagree that the limitation of a nonrefastenable bond is directed to how the bond is used.

The "outward" limitation

Applicants' independent Claims 1, 19, 36 and 52 also require that the "frangible bond" is located "outward" of the fastening component and mating fastening component when the fastening component and mating fastening component are in the unfastened condition. Sauer does not disclose that the secondary fastener 44 (considered by the Examiner to be the frangible bond) is located "outward" of the primary fastener 42 when the primary fastener 42 and front portion 22 are in the unfastened condition.

On page 3 of the Office Action, the Examiner identifies front portion 22 of Sauer as the "fastening component" and primary fastener 42 as the "mating fastening

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component.” Fig. 2 of Sauer shows items 22 and 42 in the fastened condition on the left side and in the unfastened condition on the right side.

“Inward” and “outward” are defined in Applicants’ specification on page 15 as follows:

“Inward” and “outward” refer to positions in the transverse direction relative to the longitudinal center line of the training pant, and particularly closer to, or away from, the longitudinal center line, respectively.

“Longitudinal” and “transverse” are also defined on page 16 as follows:

“Longitudinal” and “transverse” have their customary meaning, as indicated by the longitudinal and transverse axes depicted in Figs. 2 and 3. The longitudinal axis lies in the plane of the article and is generally parallel to a vertical plane that bisects a standing wearer into left and right body halves when the article is worn. The transverse axis lies in the plane of the article generally perpendicular to the longitudinal axis. The article as illustrated is longer in the longitudinal direction than in the transverse direction.

The longitudinal axis 48 and the transverse axis 49, as well as the longitudinal center line 86 are shown in Fig. 2. In addition, Applicants’ Fig. 12 shows the embodiment in which the frangible bond 100 is located inward of the fastening component 82 and mating fastening component 84, i.e., closer to the longitudinal center line 86. (Page 8, lines 12-14 and Page 41, lines 12-14). Fig. 10 shows the embodiment in which the frangible bond 100 is located between the fastening component 82 and the distal edge 68a of the front side panel 34 and between the mating fastening component 84 and the distal edge 68b of the back side panel 134, i.e. further away from the longitudinal center line 86. (Page 8, lines 5-8 and Page 41, lines 7-12). Thus, in Fig. 10 the frangible bond is located outward of the fastening component 82 and mating fastening component 84.

Claims 1 and 19 were amended with the 04 May 2005 Amendment After Final Rejection to recite that that frangible bond is located outward of the fastening component and the mating fastening component. As stated in the Amendment After Final Rejection, those amendments are supported in the Specification at Fig. 10, page 15, lines 17-19, and page 41, lines 6-10. Claims 36 and 52 had also been amended to recite

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“wherein each frangible bond is located outward of each mechanical fastening element.” These amendments are supported in the Specification at Figs. 13A and 14A, page 15, lines 17-19, and page 44, lines 11-18.

In Sauer, as shown on the right side of Fig. 2, when the primary fastener 42 (the mating fastening component) and front portion 22 (the fastening component) are in the unfastened condition, the secondary fastener 44 is located closer to the longitudinal center line of the garment. Therefore, the secondary fastener 44 is inward of the primary fastener 42, not outward as required by Applicants’ claims. (See attached Exhibit A).

However, on page 2 of the Final Office Action under “Response to Arguments,” the Examiner states “As to the limitation of the frangible bond being ‘outward’ of the fastening component, as indicated in the interview of 10/7/05, giving the broadest reasonable interpretation and without bringing limitations from the specification into the claims, the fastener 42 is ‘away’ from the fastener 44 and is, therefore, considered outward from one another.” [Emphasis added.]

Applicants disagree that the Examiner is interpreting the claim language consistent with the requirements of the MPEP. “[A]pplicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as any special meaning assigned to a term is clearly set forth in the specification.” MPEP 2173.01. In this case, the meaning assigned to the term “outward” is clearly set forth in the specification, both as a defined term and in the text, as described above.

Furthermore, “During patent examination, the pending claims must be given the broadest reasonable interpretation consistent with the specification.” [Emphasis added.] MPEP 2173.05(a). Although the Examiner is giving the term “outward” a “broadest reasonable interpretation,” (i.e., to mean “away”) that interpretation is not consistent with the specification that specifies “outward” means away from the longitudinal center line. A claim including a term defined in the specification is to be considered in view of the provided definition, not the examiner’s broadest meaning. Applicants again direct the Examiner to MPEP 2173.05(a), which states:

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When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art.

Therefore, Applicants respectfully disagree with the interpretation given to the term "outward" by the Examiner. Applicants' position is that such an interpretation by the Examiner "without bringing limitations from the specification into the claims" is improper. Applicants respectfully request that that term be given the interpretation consistent with the specification.

Claim 60

Finally, with regard to Claim 60, Applicants' independent Claim 60 requires that the frangible bond is aligned with the fastening component and mating fastening component when the fastening component and mating fastening component are in the unfastened condition. Fig. 11 shows the frangible bond aligned with the fastening component and the mating fastening component. (Page 8, lines 9-11; Page 41, lines 11-12). On the right side of Fig. 2 of Sauer the fastening component and mating fastening component are in the unfastened condition, but the secondary fastener 44 is not aligned with the primary fastener 42.

For at least the reasons given above, Applicants respectfully submit that the teachings of Sauer fail to disclose Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

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Claim Rejections - 35 U.S.C. §103**a) Sauer**

The rejection of Claims 3, 20, and 22-27 under 35 U.S.C. §103(a) as being unpatentable over Sauer is respectfully traversed.

Claims 3, 20 and 22-27 depend from Claims 1 and 19. On page 5 of the Office Action, the Examiner states that Sauer discloses the invention substantially as claimed, but is silent on the distance between the fastening components and the distal edges.

Applicants respectfully disagree that Sauer discloses the invention substantially as claimed.

One of the factors in establishing a prima facie case of obviousness is that the prior art references must teach or suggest all the claim limitations. As discussed above with respect to Claims 1 and 19, Sauer does not disclose all of the limitations of Claims 1 or 19.

For at least the reasons presented above, Applicants respectfully submit that Claims 3, 20 and 22-27 are not rendered obvious by Sauer. Thus, Applicants respectfully request withdrawal of this rejection.

b) Sauer in view of Elsberg

The rejection of Claims 8-13, 29-31, 46-48 and 56-57 under 35 U.S.C. §103(a) as being unpatentable over Sauer in view of U.S. Patent 6,287,287 (Elsberg) is respectfully traversed.

Claims 8-13, 29-31, 46-48 and 56-57 depend from Claims 1, 19, 36 and 52. On page 5 of the Office Action, the Examiner states that Sauer discloses the invention substantially as claimed, but is silent on the strength of the bonds, and that Elsberg discloses passive side bonds having a strength within the claimed ranges.

Applicants respectfully disagree that Sauer discloses the invention substantially as claimed.

One of the factors in establishing a prima facie case of obviousness is that the prior art references must teach or suggest all the claim limitations. As discussed

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above with respect to Claims 1, 19, 36 and 52 Sauer does not disclose all of the limitations of Claims 1, 19, 36 or 52. Furthermore, neither Sauer nor Elsberg, alone or in combination, discloses all of the claim limitations.

For at least the reasons presented above, Applicants respectfully submit that Claims 8-13, 29-31, 46-48 and 56-57 are not rendered obvious by Sauer in view of Elsberg. Thus, Applicants respectfully request withdrawal of this rejection.

Allowable Subject Matter

On page 6 of the Office Action, the Examiner indicated that Claims 49-51, and 59 are allowed.

Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Respectfully submitted,

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Attachment – Exhibit A

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